



MONTGOMERY COUNTY ETHICS COMMISSION

Advisory Opinion

08-06-010

Absent a waiver, an employee must not hold any employment relationship that would impair the impartiality and independence of judgment of the public employee. Pending before the Commission is a request from an employee in the Department of Economic Development to engage in outside employment. The Department opposes the request. For the reasons that follow, the Commission agrees with the Department and denies the requested waiver.

The employee works in the Department as a Business Development Specialist. Her duties include promoting the County as “the Smart” location for foreign companies that are looking for locations in North American to do business, regardless of the type of business the company engages in.¹ She has represented the County in Europe and Asia in this regard.

A European company that develops student housing has asked the employee to assist it with its introduction into the U.S. marketplace and to identify projects in the U.S. The employee wants to start her own consulting company and take on the European company as its client. The employee states that she would not take on any other clients without Commission approval. Her outside employment would be limited to 20 hours or less per month.

The employee asserts that there is no conflict because there are presently no student housing projects in the County and, therefore, she would only work on student housing projects located outside of the County. “Should a project appear in the County in the future, I will [recuse] myself from it,” the employee writes.

The Department’s concern is that the employee may steer potential business away from the County in order to support her business. The Department concedes that it does not presently engage in student housing. Nevertheless, the Department asserts, and the employee acknowledges, it does interact with both the real estate development community and the higher educational community, both in and outside of the County. The employee counters that “those target communities are not a part of my job goals or description.”

The Commission agrees with the Department that these business interests cannot be so neatly compartmentalized and segregated for ethics purposes. There is sufficient overlap among these interests to present the employee with a conflict of interest. In sum, the employee’s County job is to bring business to the County. Her job as a consultant would be to bring a specific type of business to the U.S.—anywhere except the County. Her outside employment would therefore impair the impartiality and independence of her judgment as a County employee.

The employee notes that she is not precluded from outside employment merely because that employment would make use of the same skill set that she possesses as a County employee. In this

¹ The employee asserts that she focuses on life science and defense companies. This distinction is not determinative.

regard, she notes that police officers often work as private security guards. The employee is correct. The issue, however, is not what skill set the employee will use, but whether that outside employment relationship would impair the employee's impartiality and independence of judgment as a County employee under § 19A-12(b).

The Commission may waive the prohibitions of § 19A-12(b) if it finds that

- (1) the waiver is needed to ensure that competent services to the County are timely and available;
- (2) failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employees; or
- (3) the proposed employment is not likely to create an actual conflict of interest.

§ 19A-8(b). The record in this case does not support these findings. Accordingly, the Commission denies the requested waiver.

July 22, 2008

Date



Antar C. Johnson, Chairman